

Patenting of Higher Life Forms in Canada

By Anne Mitchell

On December 5 2002, the Supreme Court of Canada gave us its decision on whether the 'Harvard Mouse' should be patentable in Canada. This was the last stop in a case that has wound its way through the courts since the 1980s. The decision can be found on the Supreme Court of Canada's website at <www.scc.ca>.

The Canadian Council of Churches and the Evangelical Fellowship of Canada were intervenors in this case last May, and their intervention can be found at <www.cce-ccc.ca>. Several other environmental non-government organizations also intervened.

Why did these groups bother to intervene, you may ask? That question could be answered with another:

What is it in nature and human knowledge that we have the right to own? This was the query that the St. Lawrence Regional Gathering posed when considering the issue in spring, 2001.

Quakers have taken an active interest in this case. Canadian Yearly Meeting wrote to the Prime Minister in August 2000, encouraging him to appeal the decision of the Federal Court of Appeal. The CYM letter said that an issue of such fundamental consequences should be decided by Parliament – after a full public debate. Having a seat on the Governing Board of the Canadian

Council of Churches, the Quakers were able to bring this concern forward to the Council of Churches, as well.

Many sectors in Canadian society, including faith communities, non-government organizations as well as others, have been raising their voices on how the biotechnology industries appear to be advancing in ways that alarm Canadians and could cause irrevocable harm to our environment and societies.

Biotechnology, and particularly the patenting of the products of

with respect to multicellular plants and animals – the so-called 'higher life forms'. Last December, it was decided by the Supreme Court of Canada not to cross this line.

Many arguments have been put forward for extending the scope of patent protection. These include the importance of continued research and development, and symmetry with some trade partners. A policy that denies the patenting of higher life forms is seen as potentially discouraging of investment in the biotechnology sector, which is growing quickly and is estimated to be valued at fifty billion dollars (Canadian) by 2005.

There already is protection through the current scope of awarding patents. This can be seen in the Monsanto Canada Inc. vs. Schmeiser case, where Monsanto was recently successful in a challenge against Saskatchewan farmer Percy Schmeiser for unlicensed use of their Roundup Ready Canola (Canadian Patent number 1,313,830).

Canada is a signatory to the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Article 27 of this agreement provides for excluding plants and animals from patent protection. However, there is increasing pressure from our major trade partners to eliminate the use of this exception. The United States, Australia

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biotechnology, are controversial issues. Patenting is a central feature of economic development within the biotechnology sector. There are many issues surrounding the patenting of inventions of biotechnology, and the Canadian perspective is evolving. A variety of biological items, including individual proteins and genes, cell lines, and single-celled microorganisms, are eligible for patent protection in Canada. A line has been drawn, however,

and the European Union allow the patenting of higher life forms.

ARE QUAKERS READY TO PARTICIPATE IN THIS DEBATE?

There are also many arguments against extending patent protection. One, which was argued before the Supreme Court of Canada, is the ethic of treating life as a mere commodity for sale in the marketplace. A second, equally persuasive, argument considers the social implications of an unequal distribution of

the wealth and knowledge defined by these patents. This is particularly the case for developing countries concerning the intellectual property protection of crop plants.

There are many Canadians who are of the view that many issues are of such societal, moral and ethical importance that they need to be thoroughly considered. These issues include: how we consider life on Earth, the long-term environmental, biodiversity and health implications, and who will benefit from these technologies. The Supreme Court of Canada, in making its decision on this issue, agrees.

This debate should include the moral and ethical issues concerning the commodification of life and the equity issues of social justice.

The Canadian Council of Churches is preparing a study guide on the patenting of plants and animals for consideration by their member churches.

Are Quakers ready to participate in this debate? □

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